XI HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.2610/07 सन् 200

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT:	Phekoo Ram @ Mathura Sai, S/o Dukhiram Yadav, aged 32 years, R/o Dongartarai, P.S. Katghora, District: Bilaspur.

- Versus -

RESPONDENT:	State of Madhya Pradesh (now Chhattisgarh), Through - Police Station Katghora, District Bilaspur.

(Criminal appeal under Section 374 (2) of the Cr.P.C.)

Division Bench: - Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ.

25-6-2007:-

Smt. Nisha Chaturvedi, Advocate, appears on behalf of Smt. Kiran Jain, Advocate for the appellant.

Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 24th October, 1997 passed by the 5th

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Additional Sessions Judge, Bilaspur, in S.T. No.422/96 whereby learned Additional Sessions Judge after holding the accused/ appellant guilty for commission of offence under Section 376 of the I.P.C., sentenced him to undergo R.I. for 14 years & to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for 2 years.

The case of the prosecution, in brief, is that accused/appellant Phekoo Ram was committing rape on the prosecutrix for the last 7 months prior to 5-6-96. Wife of the accused Dooj Bai used to sleep along with her children in the Parchi of their house whereas, the prosecutrix used to sleep inside the room. In one night, the accused came in a drunken condition and committed rape on the prosecutrix after threatening her with dire consequences if she would object or disclose to anybody else. Thereafter, the accused continued to commit rape on the prosecutrix, thereby she became pregnant. Ultimately, fetus was aborted on 7-6-96. Thereafter, the matter was reported by the prosecutrix in the Police Station Katghora. After registering the case for commission of offence under Section 376 of the I.P.C. under Ex.-P/1, Panchanama Ex.-P/3 was prepared regarding fetus of the prosecutrix. The postmortem Ex.-P/4 was conducted on the fetus by Dr. G.S. Kanwar, Assistant Surgeon, PHC, Katghora. The prosecutrix was sent for medical examination under Ex.-P/8. The

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आदेश पत्रक (पूर्वानुबद्ध)

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medical examination of the accused was conducted by Dr. S.N. Pandey and he prepared the report Ex.-P/10.

After completion of the investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Katghora, who in turn committed the case to the Sessions Judge, Bilaspur from where learned Additional Sessions Judge received the case on transfer.

The prosecution in order to establish the charge against the accused examined 9 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

As far as conviction of the accused under Section 376 of the I.P.C. is concerned, learned counsel for the appellant has not disputed that fact. Moreover, perusal of the evidence of PW-1 Budhwara Bai and PW-7 Dooj Bai, mother of Budhwara Bai and wife of the accused,

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आदेश पत्रक (पूर्वानुबद्ध)

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establishes that the accused committed rape on the prosecutrix after giving threat that if she would not allow him to have intercourse, then he would commit her murder, thereby he committed rape, he continuously committed rape on prosecutrix, thereby the prosecutrix became pregnant. When the fetus was aborted, the fact came to the notice of the general public. Thereafter, the matter was reported. PW-7 Dooj Bai has categorically stated that the accused used to threaten them that he would kill them if they would disclose this fact to anybody and they would not allow him to commit rape. The evidence of Budhwara Bai is corroborated by the medical evidence of Dr. N.D. Ram (PW-6) who medically examined Budhwara Bai regarding her pregnancy. Therefore, we do not find any illegality or infirmity in the judgment of the trial Court to the extent of conviction of the accused/appellant under Section 376 of the I.P.C.

Learned counsel for the appellant argued that at the time of commission of offence the prosecutrix was aged 14 years, therefore, minimum sentence which can be awarded under Section 376 of the I.P.C. in such cases is 7 years. The accused is in detention since 11-6-96 thereby he is in detention for about 11 years, which has not been disputed by learned counsel for the State. She further argued that Budhwara Bai has already been sent with Pardesi Ram to whom she wanted to marry.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

It is admitted position that the accused is in detention for about 11 years. It has come in cross-examination that Budhwara Bai wanted to marry Pardesi Ram, the accused was not agreeable for the same. In cross-examination of the mother of the prosecutrix, it has come that she has been sent with Pardesi Ram. As the accused is in detention for about 11 years, therefore, we are of the considered opinion that if the accused is directed to be released on the sentence already undergone by him, that will meet ends of justice.

In the result, the appeal partly succeeds while maintaining conviction under Section 376 of the I.P.C. Sentence of 14 years imposed on the accused/appellant is reduced to already undergone i.e. 11 years. The accused be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Barve